

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY MAURICE GRAVES,  
Petitioner,

v.

A. CIOLLI, Warden,  
Respondent.

No. 1:21-cv-00010-DAD-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND DISMISSING  
PETITION

(Doc. No. 5)

Petitioner Tony Maurice Graves is a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On January 6, 2021, the assigned magistrate judge issued findings and recommendations, recommending petitioner's claim for federal habeas relief be rejected and that the pending petition be denied because petitioner does not present a claim of actual innocence and he has had unobstructed procedural opportunities to present his claim. (Doc. No. 5 at 4–5.) The pending findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within twenty-one (21) days of service. (*Id.* at 6.) On February 2, 2021, petitioner filed objections. (Doc. No. 6.) Petitioner's objections fail to address the magistrate

1 judge's analysis and only reassert petitioner's mistaken understanding that his payment of certain  
2 court fees served as an alternative to his serving of hid 228-month prison sentence.

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
4 *de novo* review of this case. Having carefully reviewed the entire file, the court concludes that  
5 the findings and recommendations are supported by the record and proper analysis.

6 In addition, having concluded that the pending petition must be dismissed, the court now  
7 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of  
8 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an  
9 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
10 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds  
11 without reaching the underlying constitutional claims, the court should issue a certificate of  
12 appealability “if jurists of reason would find it debatable whether the petition states a valid claim  
13 of the denial of a constitutional right and that jurists of reason would find it debatable whether the  
14 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
15 In the present case, the court finds that reasonable jurists would not find the court's determination  
16 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to  
17 proceed further. Therefore, the court declines to issue a certificate of appealability.

18 Accordingly,

- 19 1. The findings and recommendations issued on January 6, 2021 (Doc. No. 5) are  
20 adopted in full;
- 21 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 22 3. The court declines to issue a certificate of appealability;
- 23 4. The Clerk of the Court is directed to close this case.

24 IT IS SO ORDERED.

25 Dated: **February 23, 2021**

26   
UNITED STATES DISTRICT JUDGE